



Before: Judge Alessandra Greceanu
Registry: New York
Registrar: Morten Albert Michelsen, Officer-in-Charge

FOY

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

OS SUSPENSION OF ACTION

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Alister Cumming, ALS/OHRM, UN Secretariat

Introduction

1. On 11 October 2017, at 5:55 p.m., the Applicant, a staff member with United Nations Stabilization Mission in Haiti (“MINUSTAH”) at the FS-5 level, step 11, on a continuing appointment, filed an application for suspension of action during management evaluation pursuant to art. 13 of the Dispute Tribunal’s Rules of Procedure, requesting that the decision to terminate his employment contract be suspended.

2. On 12 October 2017, at 9:45 a.m., the Registry acknowledged receipt of the application and transmitted it to the Respondent, instructing him to file a reply by 5:00 p.m. on 12 October 2017.

3. On 12 October 2017, at 4:48 p.m., the Respondent filed his reply in which he contends that the application is moot as it has been decided not to implement the contested decision pending management evaluation.

Background

4. Appended to the application for suspension of action, the Applicant filed his termination letter from the Chief of Mission Support (a staff member from Department of Field Support was also copied) dated 9 October 2017 in which is stated as follows (emphasis in the original):

Notice of termination of continuing/permanent appointment

[Name of the Applicant and his index no.]

Dear [name of the Applicant],

Reference is made to my earlier letter to you on the subject **Advance information letter**. Termination of appointment with MINUSTAH. This letter serves to inform you that efforts by Field Personnel Division for your lateral re-assignment under the delegation of [the Under-Secretary-General for Department of Field Support] has not been successful and therefore the Under-Secretary-General for

Management has approved the termination of your appointment with the United Nations in accordance with Staff Regulation 9.3 (a)(i) and Staff Rule 9.6 (c)(i).

This is an official notice that your appointment will be terminated in line with Staff Rule 9.7, and your separation will be effective **15 October 2017**.

The Under-Secretary General for Management also approved payment of termination indemnity pursuant to Staff Regulation 9.3 (c), Staff Rule 9.8 and in accordance with the rates set out in Annex III of the Staff Regulations. In addition a compensation in lieu of notice will be paid in line with Staff Rule 9.7(d).

The Human Resources Section of MINUSTAH will follow up with you on the necessary arrangements.

I take this opportunity to express the mission's sincere appreciation for your dedication and contribution to the work of the United Nations and wish you the best in your future endeavours.

Parties' submissions

5. The Applicant contends that the termination of his continuing appointment was prima facie *unlawful* as it was in breach of staff rule 9.6(e) and the jurisprudence established in *Lemonnier* 2017-UNAT-762. The Applicant submits that his application is urgent because he “barely had 3 working days from date [he] received the termination letter” and that the decision will cause “[i]rreparable physical and personal damages and against human rights”.

6. The Respondent submits that the Application is moot because the contested decision will not be implemented pending management evaluation and that notification of this will be sent to the Applicant prior to the close of business on 13 October 2017. The Applicant has been provided with the relief he is seeking, and there is therefore no matter for the Dispute Tribunal to adjudicate.

Consideration

The mandatory and cumulative conditions for suspending an administrative decision

7. Article 2.2 of the Dispute Tribunal's Statute states:

... The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears prima facie to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. The decision of the Dispute Tribunal on such an application shall not be subject to appeal.

8. Article 8.1(c) of the Tribunal's Statute states that an application shall be receivable if: "... [a]n applicant has previously submitted the contested administrative decision for management evaluation, where required".

9. Article 13.1 of the Tribunal's Rules of Procedure states:

... The Dispute Tribunal shall order a suspension of action on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears prima facie to be unlawful, in cases of particular urgency and where its implementation would cause irreparable damage.

10. The Tribunal considers that, for an application for suspension of action to be successful, it must satisfy the following mandatory and cumulative conditions:

- a. The application concerns an administrative decision that may properly be suspended by the Tribunal;
- b. The Applicant requested management evaluation of the contested decision, which evaluation is ongoing;

- c. The contested decision has not yet been implemented;
- d. The impugned administrative decision appears *prima facie* to be unlawful;
- e. Its implementation would cause irreparable damage; and
- f. The case is of particular urgency.

Whether application concerns an administrative decision that may properly be suspended by the Tribunal

11. The Tribunal notes that it is uncontested that the contested decision in the present case, namely the decision to terminate the Applicant's continuous contract on 15 October 2017 is an administrative decision subject to being reviewed by the Tribunal, including being suspended pending management evaluation and that the Applicant filed a management evaluation request of this decision on 10 October 2017 which is currently pending.

12. Further the Tribunal notes that the Respondent, on behalf of the Secretary-General has informed the Tribunal that the Administration has decided—and, consequently, obliged itself—not to implement the contested administrative decision during the pendency of the management evaluation and to issue a notification in this sense to the Applicant no later than close of business on 13 October 2017.

13. The Tribunal considers that it results that the relief the Applicant has requested, namely that the decision to terminate his continuous appointment be suspended during the pendency of management evaluation, has already been granted by the Administration.

14. Consequently, the Tribunal also considers that since the implementation of the contested decision pending management evaluation was suspended by the

Administration pending management evaluation, there is no further determination to be made by the Tribunal in the present case.

Conclusion

15. Taking act that the Administration has already granted the requested relief, and that the implementation of the contested decision is already suspended pending management evaluation, the Tribunal ORDERS:

The application for suspension of action is moot

(Signed)

Judge Alessandra Greceanu

Dated this 12th day of October 2017